

REMARKS/ARGUMENTS

In the Restriction Requirement dated November 4, 2008, the Examiner delineated the following inventions as being patentably distinct:

Group I: Claims 1-19 and newly added Claims 30 and 31, drawn to a separator for an electrochemical cell;

Group II: Claims 20-27, drawn to processes for producing a separator; and

Group III: Claim 28, drawn to an electrochemical cell.

Claims 30 and 31 are added to replace canceled Claim 29 because it was not in compliance with U.S. patent practice. The term "use of" is not in compliance with Office practice. The newly added claims do not introduce new matter since they read on claims that were initially presented.

Applicants provisionally elect with traverse the invention of Group I, Claims 1-19, 30, and 31.

The Examiner is requested to consider the following arguments why all the claims should be examined together.

The claims of Groups I-III are integrally linked as product, process, and the use of said product. All of the claims, either directly or indirectly depend on Claim 1. A dependent claim is one which contains all the features of another claim and is in the same category of claims as other claims. It does not matter if a dependent claim itself contains a further invention. All of the claims should be grouped together since they form a single general inventive concept.

Restriction is only proper if the claims of the restricted groups are either independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable

distinction (M.P.E.P. § 803). Restriction between a product, process for making said product, and the use thereof is proper when the product can be made by another method. Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not provided sufficient reasons or examples to support patentable distinctness. Final products, method of making, and method of use should be examined together as a single inventive entity especially wherein the sole disclosed utility of the product is that recited in the specification.

Different classification of subject matter to be divided is not conclusive proof of independent status and divisibility.

Applicants respectfully traverse on the grounds that the Office has not shown that a burden exists in searching the entire application.

Further, the MPEP at § 803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct and independent inventions.”

For the reasons set forth above, Applicants request that the Restriction Requirement be withdrawn.

Further, Applicants reserve the right to file divisional application on the non-elected subject matter, if so desired, and be accorded the benefit of the filing date of the parent application.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and an early notice of such action is earnestly solicited.


Respectfully submitted,

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